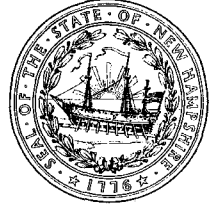




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Akwa Vista, LLC
Richard L. Mailloux, Registered Agent
59 Sandy Pond Parkway
Bedford, New Hampshire 03110

Akwa Waterfront, LLC
Richard L. Mailloux, Registered Agent
59 Sandy Pond Parkway
Bedford, New Hampshire 03110

Atom Contracting Corp.
Charles F Cleary Esq., Registered Agent
59 Sandy Pond Parkway
Bedford, New Hampshire 03110

Re: Akwa Vista, Laconia, NH
Alteration of Terrain Permit #WPS-6715
Wetlands Permit # 2003-01476

**ADMINISTRATIVE ORDER
No. WD 05-10**

April 8, 2005

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Akwa Vista, LLC, Akwa Waterfront, LLC, and Atom Contracting Corp., pursuant to RSA 485-A:22 and RSA 482-A:6. This Administrative Order is effective immediately upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 29 Hazen Drive, Concord, NH.
2. Akwa Vista, LLC is a New Hampshire limited liability company having a mailing address of 59 Sandy Pond Parkway, Bedford, New Hampshire 03110.
3. Akwa Waterfront, LLC is a New Hampshire limited liability company having a mailing address of 59 Sandy Pond Parkway, Bedford, New Hampshire 03110.
4. Atom Contracting Corporation is a New Hampshire corporation having a mailing address of 59 Sandy Pond Parkway, Bedford, New Hampshire 03110.
5. Akwa Vista, LLC, Akwa Waterfront, LLC, and Atom Contracting Corp. are hereinafter collectively referred to as "the Responsible Parties."

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2982 • TDD Access: Relay NH 1-800-735-2964

DES Web site: www.des.nh.gov

C. STATEMENT OF FACTS AND LAW

1. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, DES has adopted NH Administrative Rules Env-Ws 415 to implement this program.
2. RSA 482-A authorizes DES to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
3. RSA 482-A:3, I states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
4. RSA 482-A:14, III provides that "(f)ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A".
5. Env-Ws 415.02(y) defines significantly altering the characteristics of the terrain to include disturbing more than 100,000 square feet of contiguous area.
6. RSA 485-A:17 requires any person who proposes to significantly alter the terrain to obtain a permit from DES prior to initiating the work.
7. Env-Ws 415.09(i) and (k) require employment of temporary and permanent methods for preventing soil erosion and controlling runoff.
8. Env-Ws 415.09(j) requires construction phasing and sequencing, including methods for limiting the length of time of exposure of unstabilized soils.
9. Akwa Vista, LLC is the owner of property located in Laconia, NH, more particularly identified on City of Laconia Tax Maps as Map and Street # 110-234 Lots 1 and 2, Map and Street # 116-306 Lots 3,4,7, and 9, Map and Street # 116-234 Lot 8, Map and Street # 126-252 Lot 9, and Map and Street # 141-252 Lot 5. Akwa Waterfront, LLC is the owner of property located on Scenic Road in Laconia, NH, more particularly identified on City of Laconia Tax Map as Map and Street # 131-234 Lot 3. Together the aforementioned lots comprise "the Property."
10. Atom Contracting Corp. ("Atom") is the contractor for the Akwa Vista/Akwa Waterfront project. Mr. Adam Mailloux is the Vice President of Atom.
11. On March 5, 2004, DES issued Alteration of Terrain/Site Specific Permit # WPS-6715 to Charan Industries, Inc. to construct a gated, single-family residential development, including a clubhouse with associated parking, disturbing approximately 29 acres of land. Condition # 4 provided that the approved plans and supporting documentation in the project file are part of

the Alteration of Terrain/Site Specific permit. The plans detail the sequence of construction, and the measures to be taken in sediment and erosion control. Relevant provisions of the Plans include:

- a) Item # 3 in the Construction Sequence (Sheet 45 of the Plans dated 2/11/04) requires construction of "temporary sediment and erosion control facilities" and "Sediment and erosion control measure shall be installed prior to any earth moving operations." "Swales and detention ponds shall be stabilized prior to directing run-off into them."
- b) Item # 4 in the Construction Sequence (Sheet 45 of the Plans dated 2/11/04) requires construction of the "drainage and utility systems."
- c) Item# 8 in the Construction Sequence (Sheet 45 of the Plans dated 2/11/04) require that "all areas shall be stabilized by the end of the fall growing season. Areas not stabilized within the growing season must be stabilized by the use of erosion control matting."
- d) Item # 9 in the Construction Sequence (Sheet 45 of the Plans dated 2/11/04) requires construction of "temporary diversion channels, as required."
- e) Item # 16 in the Construction Sequence (Sheet 45 of the Plans dated 2/11/04) requires that "all ditches, swales, basins and detention ponds must be stabilized prior to directing runoff into them."

12. On March 29, 2004, DES was notified that Akwa Vista, LLC had acquired the Property from Charan Industries, Inc.

13. March 29, 2004, DES personnel met with Adam Mailloux, Kurt Mailloux, Troy Mailloux, Richard Mailloux, Shanna Mailloux, of the Akwa Vista project, and Liz Stone of the Laconia Conservation Commission for a pre-construction meeting at the NHDES offices, 29 Hazen Drive, Concord, NH. All parties present signed the "Pre-Construction Meeting Memo" sheet. Relevant points that were discussed at the meeting were:

- a) Akwa Vista was to submit name changes for the wetlands and site specific permits;
- b) The wetland permit must be submitted/registered with the County Registry of Deeds;
- c) Conditions 11-16 of the Wetland Permit were read and clarified;
- d) The conditions and requirements of the site specific permit were discussed.

14. On March 30, 2004, DES issued Wetlands Permit # 2003-1476 ("the Wetlands Permit") to Akwa Vista, LLC to "dredge and fill 16,513 square feet of forested wetland for the construction of an access road and common driveway for 171 family residential lots in the cluster subdivision." The Wetlands Permit contains specific conditions and the measures to be taken to protect surface waters and jurisdictional wetlands. Relevant conditions of the Wetlands Permit include:

- a) Condition #6 of the Wetlands Permit requires that the Permit be "recorded with the Registry of Deeds Office by the Permittee. A copy of the registered permit shall be submitted to the NHDES Wetlands Bureau prior to construction."
- b) Condition # 11 of the Wetlands Permit requires that "appropriate erosion and siltation controls be installed prior to construction, and remain until the area is stabilized.
- c) Condition # 16 of the Wetlands Permit requires that "work be conducted in a manner so as to minimize turbidity and sedimentation to surface waters and wetlands."
- d) Condition # 20 of the Wetlands Permit states that "the contractor responsible for completion of the work...utilize techniques described in the DES Best Management Practices for Urban Stormwater Runoff Manual (January, 1996) and the Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire (August, 1992)" (hereinafter collectively referred to as "Best Management Practices).

15. On December 16, 2004, DES issued Administrative Order WD 04-29 to the Responsible Parties.

16. On January 14, 2005, DES issued a Notice of Compliance and Recordation for Administrative Order No. WD 04-29 to the Responsible Parties.

17. On March 22, 2005, DES personnel conducted a follow-up visit of the Property. At the time of the visit the swales on Scenic Drive and the intermittent stream appeared to be frozen, although there was a slight amount of discharge into Lake Winnepesaukee. The discharge was free of sediment.

18. On March 29, 2005, DES personnel conducted an inspection of the Property. The detention basin adjacent to Scenic Drive remained unstable and the soil was saturated. Erosion and sediment controls had not been maintained. There was a small amount of runoff leaving the Property and entering Lake Winnepesaukee. The discharge into the Lake was slightly turbid. No samples were taken. Adam Mailloux was on the Property at the time of the site visit. DES personnel recommended that erosion and sediment controls on the Property be maintained and "reinforced" immediately.

19. On March 30, 2005, the Laconia Conservation Commission notified DES that there was an on-going discharge of turbid runoff into Lake Winnepesaukee. DES personnel visited the Property but did not walk the entire site as exposed soils were saturated to a point that they were impassable to foot traffic. Water samples were collected to be analyzed for turbidity. The analytical results indicated a measurement of 37 Nephelometric Turbidity Units (NTUs) outside of a turbidity curtain installed in Lake Winnepesaukee (the Lake) in a location where a culvert discharges to a channel which flows into the Lake. The background turbidity level taken in the Lake approximately 200 feet northwest of the discharge point was less than 1 NTU.

20. On March 31, 2005, DES personnel again visited the Property and collected water samples to be analyzed for turbidity. The results of the tests were as follows: 50 NTUs at an area in the Lake 10 feet from the point where discharge from the Property entered the Lake;

55 NTUs within a channel at a point approximately 10 feet upgradient from where the channel enters the Lake; and, less than 1 NTU in a sample collected as a background sample at a point along the shoreline of the Lake approximately 200 feet northeast of the channel discharging to the Lake.

21. On April 1, 2005, DES personnel met with representatives from Akwa Vista, LLC and Atom Contracting Corp. Turbid water was exiting the detention basin adjacent to Scenic Drive and flowing into Lake Winnepesaukee. Equipment was actively working on the unstabilized road surface and sediment-laden water was flowing down the slope. Erosion controls were not in place. DES personnel discussed mechanisms for immediately stabilizing the saturated soil in preparation for anticipated weekend rains. Water samples were taken to be analyzed for turbidity. The results were as follows: 180 NTUs at the outlet of the detention basin on Scenic Drive, 120 NTUs in Lake Winnepesaukee, outside the turbidity curtain. The background turbidity level taken approximately 100 feet southeast of the discharge point measures 3.9 NTUs.

22. On April 2, 2005, DES personnel visited the Property and collected water samples to be analyzed for turbidity. The results were as follows: 56 NTUs in Lake Winnepesaukee. The background turbidity level was less than 1 NTU.

23. On April 3, 2005, DES personnel visited the Property and collected water samples to be analyzed for turbidity. The results were as follows: 75 NTUs at the outlet of the detention basin on Scenic Drive, 6.2 NTUs in the swale on Scenic Drive upstream of the detention basin outlet, 75 NTUs in Lake Winnepesaukee outside the turbidity curtain. The background sample, collected at a point southeast of the discharge point measured 7.6 NTUs.

24. Surface water runoff from the Property entered into Lake Winnepesaukee, a surface water of the state.

25. Pursuant to RSA 485-A:8, II, Lake Winnepesaukee is classified as a Class B water.

26. Pursuant to Env-Ws 1703.11(b), turbidity in Class B waters shall not exceed naturally occurring conditions by more than 10 NTUs.

27. RSA 485-A:13 states that it shall be unlawful for any person or persons to discharge or dispose of any sewage or waste to the surface or groundwater of the state without first obtaining a permit from DES. Sediment-laden water constitutes waste as defined under RSA 485-A.

D. DETERMINATION OF VIOLATIONS

1. The Responsible Parties have violated RSA 485-A:17 and Env Ws 415.09(i) by failing to install adequate erosion control measures on the Property.

2. The Responsible Parties have violated RSA 485-A:17 and Condition #4 of the Alteration of Terrain/Site Specific Permit by failing to follow the approved construction sequence.

3. The Responsible Parties have violated RSA 485-A:17 and Condition #4 of the Alteration of Terrain/Site Specific Permit by failing to stabilize areas within the Property

4. The Responsible Parties have violated RSA 485-A:13, I, by discharging waste into the surface waters of the state without obtaining a permit from DES to do so.
5. The Responsible Parties have violated RSA 482-A:3, I by placing fill in surface waters of the State without a permit from DES (Condition #16 of the Wetlands Permit).
6. The Responsible Parties have violated RSA 482-A, by not following the erosion control methods outlined in Best Management Practices during construction operations on the Property (Condition #20 of the Wetlands Permit).

E. ORDER

Based on the above findings, DES hereby orders the Responsible Parties as follows:

1. **Immediately cease and desist** all activities on the Property, except as necessary to stabilize the Property pursuant to this Order.
2. **Immediately stabilize the Property** as necessary to protect surface water quality and prevent erosion. At a minimum, the following activities shall be completed within 7 days of the date of this Administrative Order:
 - a) Implement the approved erosion and sediment control plan, including, at a minimum, temporary and permanent erosion control measures necessary to stabilize the site and prevent further impacts to surface waters;
 - b) Loam, seed, and install erosion control matting on all unstabilized/unvegetated (or sparsely vegetated) slopes;
 - c) As necessary place stone check dams and silt fence perpendicularly across all unstabilized road surfaces; and
 - d) Place non-erodible granular backfill on all unpaved road or travel surfaces.
3. Limit construction traffic on road surfaces to that necessary to complete items 2a through 2d, and any disturbance to road surfaces shall be stabilized at the end of each work day with the placement of additional non-erodible granular backfill.
4. Submit photographic evidence to DES, no later than 15 days from the date of this Order, documenting completion of 2a-d.
5. Continue monitoring of the Property by a Professional Engineer or a Certified Professional in Erosion and Sediment Control ("the monitor") to monitor construction and implementation of stabilization measures on the Property.
 - a) The monitor shall, at a minimum, perform inspections once every 7 days and within 24 hours of a 0.5 inch rainfall. The monitor shall provide DES with monitoring reports via facsimile at (603) 271-4128 within 24 hours of each inspection.

6. The monitor shall submit photographic evidence that demonstrates that all unstabilized areas of the Property have been stabilized with 85% vegetative cover.
7. **Within 20 days of the date of this Order**, submit a restoration plan to the DES Wetlands Bureau for removal of accumulated sediment in Lake Winnepesaukee. The restoration plan shall include:
 - a) proposed means of sediment/turbidity control; and
 - b) a construction sequence including the methods for completion of the restoration.
8. Within 30 days of receiving written approval from DES, implement the plan as conditioned by DES
9. Submit correspondence, data, and reports made in connection with this Order, **other than appeals**, to DES as follows:

Ana Herrero, Compliance Specialist
Land Resources Management
DES Water Division
29 Hazen Drive - P.O. Box 95
Concord, NH 03302-0095

F. APPEAL

Any person aggrieved by the determinations D.1 through D.4 of this Order may appeal to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.


Any person aggrieved by determinations D.5 and D.6 of this Order may request DES to reconsider those determinations within 20 days from the date of the Order. The request for reconsideration must describe in detail each ground for the request. DES may grant a hearing if in its opinion, good cause is demonstrated by the request. Any party not satisfied with the decision on reconsideration may appeal determinations D.2, D.6 and/or D.8 through D.10 to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

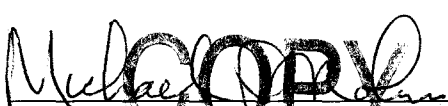
Filing an appeal or request for reconsideration of the Order will not automatically relieve the Responsible Parties of their obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485-A:22 and RSA 482-A:13 and 482-A:14 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. The Responsible Parties remain obligated to comply with all applicable requirements. DES will continue to monitor the Responsible Parties' compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Belknap County Registry of Deeds so as to run with the land.


Harry T. Meva, Director
Water Division


Michael P. Nolin, Commissioner
Department of Environmental Services

Hand Delivered

cc: Gretchen R. Hamel, Legal Unit Administrator
James P. Martin, Public Information Officer, DES
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Belknap County Registry of Deeds
Tracey Boisvert, Senior Enforcement Officer, DES Wetlands
Jocelyn Degler, Wetlands Permitting Officer, DES
Laconia Planning Board
Laconia Conservation Commission